88-1240

Supreme Court, U.S.
FILED
JAN 25 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

JONATHAN B. AINSWORTH

Petitioner

V.

THE STATE BAR OF CALIFORNIA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

JURISDICTIONAL STATEMENT

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Petitioner
In Propria Persona

64 pp

QUESTIONS PRESENTED

Attorneys throughout California are being deprived of their livelihood without their Constitutional rights. Decisions of the California Supreme Court conflict with decisions of the United States Supreme Court in this regard.

Are attorneys in California entitled to their Constitutional rights in proceedings brought against them by the California State Bar? When this question was presented in another jurisdiction, the United States Supreme Court said "yes". In Re Ruffalo 390 U.S. 544, 885 S Ct. 1222. The California Supreme Court and the California State Bar say "no", constantly and consistently ignoring United States Supreme Court precedents.

The Supreme Court has in the past considered matters involving individuals' rights to practice law when serious violations of constitutional safeguards have occurred. The current climate in California presents just such an occurrence. Traditional notions of due process are summarily dismissed by tribunals. Judges contend that attorneys are not entitled to due process and say so unabashedly.

The current climate in California presents a "McCarthy like" guilt by accusation climate.

Charges that have been withdrawn are allowed to proceed anyway even after notice has been given that they were withdrawn. An accused's right to counsel is denied. New charges are added after evidence has been taken in

clear disregard to In Re Ruffalo, above. The right to cross examine and to confront witnesses is summarily denied complaining witneses often do not appear, yet their testimony is inferred by surmissal. Statutes of Limitations are ignored. Evidence is taken at trial then matters severed, violating double jeopardy prohibitions. In the present case petitioner was denied a continuance for much needed surgery and despite the fact that he was in extreme pain, denying him a fair trial.

Constitutional rights are dismissed in California as procedural niceties that attorneys are not entitled to.

The issues presented by this case have enormous applicability to the rights of attorneys throughout California. Are attorneys entitled to their contitutional rights in State Bar

proceedings? The California Supreme Court and the State Bar of California have actually said "no", yet the United States Supreme Court has said that attorneys are entitled to their constitutional rights in such proceedings, In Re Ruffalo, above.

This case focuses in on the conflict presented by the highest court in California which consistently and repeatedly, in 1988 alone, ignored U.S. Supreme Court decisions in at least three cases. The California Court will continue to do so unless this Court takes action.

This jurisdictional statement will show that petitioner was forced to undergo a procedure that more closely resembles the Spanish Inquistion than it resembles the procedures envisioned by our Founding Fathers.

PARTIES TO THE PROCEEDING BELOW

The State Bar of California brought the charges against Petitioner, Jonathan Ainsworth, ostensibly on behalf of four complaining witnesses, who had in fact withdrawn their complaints, ostensibly on behalf of two complaining witnesses who in fact refused to testify against Petitioner; and on account of one disgruntled attorney who succeeded petitioner in representation of a case, and who was even allowed to testify on behalf of his client.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	viii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF CASE	4
1. FACTS	4
2. ARGUMENT	22
A. CLAIMS WHICH WERE WITHDRAWN, BUT WHICH PROCEEDED ANYWAY, DENYING PETITIONER DUE PROCESS	22
B. DENIAL OF RIGHT TO CONFRONT WITNESSES IN VIOLATION OF THE SIXTH AMENDMENT	24
C. THE FINDINGS DID NOT CONFORM TO THE CHARGES AND WERE NOT AMENDED, THOUGH NEW CHARGES WERE ADDED AFTER EVIDENCE WAS HEARD. DENYING PETITIONER DUE PROCESS	26
D. PETITIONER WAS DENIED HIS RIGHT TO CROSS EXAMINE	33

	Page
E. PETITIONER WAS DENIED DUE PROCESS BECAUSE THE REFEREE PANEL WAS NOT IMPARTIAL	35
F. PETITIONER WAS DENIED DUE PROCESS BECAUSE THE ONE MAN HEARING PANEL DID NOT PROPERLY CONSIDER THE MITIGATING FACTORS	37
G. MANY OF THE CHARGES WERE BROUGHT WELL BEYOND THE TIME OF THE APPLICABLE STATUTE OF LIMITATIONS, THIS DENIED PETITIONER DUE PROCESS	39
H. PETITIONER WAS DENIED HIS RIGHT TO COUNSEL	40
I. THE DENIAL OF THE MOTIONS FOR A CONTINUANCE DENIED PETITIONER HIS DUE PROCESS RIGHTS	45
J. THE CLIENT SECURITY FUND MATTERS WERE IMPROPERLY SEVERED, DENYING PETITIONER DUE PROCESS AND VIOLATING HIS RIGHTS AGAINST DOUBLE JEOPARDY	48
K. CONCLUSION	49
REASONS FOR GRANTING THE WRIT	52
Appendix	

TABLE OF AUTHORITIES

	Page
Alexander v. U.S. 138 U.S. 353, 11 S. Ct. 350	18
Bouie v. Columbia 378 U.S. 347	28
Chaney v. State Bar of California 386F 2d 962, 390US 1011, 88 S. Ct. 1262 391 U.S. 929 88 S. Ct. 1803	1
Clark v. U.S. 298 U.S. 1, 53 S. Ct. 465	18
In Re Gault 387 U.S. 1	27
Green v.Elbert 63 Fed Rptr 308	16
Kelly v. State Bar 45 Cal 3d 649	20,27,29
Natali v. State Bar 45 Cal 3d 456	20,27,29

In Re Ruffalo 390 U.S. 544, 885 S.Ct. 122	i,iii,iv,1, 8,12,21,24, 26,27,28,29 30

United State Constitution

FIFTH AMENDMENT	3
SIXTH AMENDMENT	2
FOURTHEENTH AMENDMENT	2

Rules of Court

Federal Rule of Civil Procedure 15(a)	27

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA
JURISDICTIONAL STATEMENT

Petitioner, Jonathan Ainsworth, prays that the Supreme Court grant a writ of Certiorari to review the judgment of the California Supreme Court below which was filed on October 27, 1988.

OPINIONS BELOW

The opinion of the California Supreme Court which was filed on October 27, 1988 and ordered petitioner to be disbarred, is attached in the appendix as are The Notice of Appeal and The Petition for Rehearing which contains the points raised in these papers (Denied)

JURISDICTION

The jurisdiction of this Court is invoked under Section 1257(3) of Title 28 of the United States Code.

The following cases sustain jurisdiction; Chaney v. State Bar of California (1967) 386F 2d 962, 390 US 1011, 88 S Ct. 1262, 391 U.S. 929, 88 S Ct. 1803 and In Re Ruffalo 390 U.S. 544, 885 S Ct. 122.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution as amended by the Bill of Rights provides:

Fourteenth Amendment,Section 1

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." (Emphasis added)

In the present case as well as in Natali v. State Bar 45 Cal 3d 456 and in Kelly v. State Bar 45 Cal 3d 649, the California State Supreme Court refused to consider the U.S. Supreme Court decision in In Re Ruffalo 390 U.S. 544, 855, S Ct. 122, which stated that attorneys are entitled to due process in State Bar proceedings.

Sixth Amendment

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense." (Emphasis added)

Against his strenuous objection, petitioner was not allowed to confront and cross examine witnesses against him or to be represented by an attorney, nor was he properly informed of the nature and cause of many of the accusations against him.

Fifth Amendment

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be

compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

1. Facts

A. The Haschemi Matter

Petitioner began representing Hassan Haschemi, an Iranian national in 1979. In 1980 at Haschemi's insistence, certain properties in Iran which he told petitioner were "owned" by Haschemi's companies but "controlled" by the Government of Iran were transferred to American corporations owned by Petru International Corporation, a California Corporation owned 100% by Jonathan Ainsworth, petitioner herein. Hassan Haschemi had told petitioner that the properties were owned by his companies prior to the transfer to petitioner's

corporations and that there had been no official expropriation of the properties by the Government of Iran, although a managing director had been appointed to run Haschemi's Iranian Companies in his absence. Haschemi was residing in Los Angeles County at the time, shortly following the Revolution in Iran.

In 1981, a year and one half later, Hassan Haschemi let it be known that he wished for himself and his Iranian companies to be represented by another attorney in a lawsuit against Rockwell International Corporation and Rockwell International Systems, Inc. Petitioner signed a substitution of attorneys in which Hassan Haschemi and his new attorney idicated that the new attorney would represent Haschemi and his Iranian companies only, not Jonathan Ainsworth's American Corporations. The State Bar

confused Ainsworth's American Corporations with Haschemi's Iranian Companies and charged attorney Ainsworth with, incredulously, attempting to continue to represent his own American corporations which, of course he did; however, it was not improper since Jonathan Ainsworth continued to own his American Corporations including Petru International Corporatrion. A stock certificate was shown which proved this. (Exhibit 20c)

The State Bar never understood the facts of ownership. (See Transcript Vol. II Page 7 lines 6-25, page 8 lines 1-16) It charged Jonathan Ainsworth with "altering" the substitution of attorneys because he had added the clarifying statement that he would continue to represent Petru, a corporation which he,

Ainsworth, owned, as well as Petru's subsidiary American Corporations. The complaining witness, Stephen Miller, even admitted that the substitution signed by Haschemi which he sent Ainsworth "...did not include Petru" (Transcript Vol. III page 91 lines 14-17 See also Exhibit 7 and 13).

As pled the charges were meaningless. The State Bar alleged that Ainsworth was improperly representing his own corporations in 1979, and the corporations were not even created until 1980. (See Exhibit KKK as well as Transcript Vol. II page 137 lines 15-20, Vol. VI, page 68 lines 18-25, page 69 lines 1-11). The charges were never amended. The were objected to at the hearing, yet the State Bar and the Hearing Referee ignored the complete incongruity between the charges and the

findings, completely ignoring the differences between the Iranian companies and the American Corporations.

The procedure of adding findings that were not pled by the presecution in a disbarment proceeding is condemned by the United States Supreme Court in In Re Ruffalo 390 U.S. 544, 885 S.Ct. 122, yet ignored by the California Supreme Court in this case, though it was objected to at all stages of the proceedings beginning at the hearing. (See discussion of In Re Ruffalo, below)

Additionally the State Bar contended that petitioner demanded payment of fees on other legal metters as a condition precedent to allowing copying of Hassan Haschemi's files by his new attorney, yet the attorney's young associate admitted in writing that he had copies of the pleadings and the depositions,

(See Exhibit 14, page 10 lines 12-13), the new attorney testified that he knew of no conversations where payment of legal fees was made a condition precedent (Transcript Vol. II, page 84 lines 19-25, page 85 lines 1-9, page 102 lines 5-7) and nowhere in the mailgram in which petitioner requested his fees be paid (sent while out of town on a 10 week trial) was there ever any mention of a condition precedent regarding payment of legal fees.

Petitioner made another copy of Haschemi's court files as requested by the court in the case against Rockwell, then deposited them in the Court, following petitioner moving his law office and residence from Southern California to Northern California. Mysteriously, petitioner was held in contempt for turning over the papers

late, though a stay in the proceedings had been ordered and through petitioner had never been served with the OSC re contempt, and petitioner had no knowledge that the hearing would be a re contempt hearing and a prior O.S.C. re contempt was vacated (Exhibit 34). Indeed the previous order states on its face that it was not served on petitioner!

Haschemi's new attorney proceeded to lose Haschemi's case. He even blamed the U.S. District Court judge by saying "Judge Takasugi who is generally a very patient judge, lost his patience in this case and, quite frankly wanted to get rid of the case" (Transcript Vol. II page 67 lines 17-19) in an attempt to excuse how he, the compalining witness, lost the motion for summary judgment. The Ninth Circuit Court of Appeals

upheld Judge Takasugi's judgment.

These procedural matters were raised at the State Bar hearing, in motions, and before the California State Supreme Court. The Petition for Rehearing in the California Court in the appendix discusses the objections in greater detail at pages 17-53, 124-129.

B. The Ghasemloo Matter

This involves petitioner hiring a paralegal. As charged, the State Bar alleged that hiring Ghasemloo and agreeing to pay him 1/2 of the proceeds of the Tchacosh, Inc. case allegedly violated the prohibition against an attorney splitting a legal fee with a non lawyer. As pled, the charges deal with a corporation that didn't even exist until 1980, yet the State Bar alleged the contract was entered into in

1979. Paying a percentage of proceeds for a corporation owned by petitioner could hardly be termed splitting a legal fee.

The State Bar never amended these charges which do not conform to the findings and cannot be used by the State Bar to disbar petitioner pursuant to the holding in In Re Ruffalo, (See Discussion below). The attached Petition for Rehearing in the California Court discusses the objections in greater detail at pages 54-57, 129-132.

C. The Wetherford Matter

Petitioner filed a class action on behalf of several plaintiffs alleging that the widespread practice of California counties charging parents for room and board while their children were

incarcerated in juvenile halls was unconstitutional. Petitioner alleged equal protection and due process violations, as well as a California State Supreme Court case which in 1982 had outlawed the practice and had declared it unconstitutional. Unknown to petitioner, the court later granted a rehearing, then later upheld its first opinion in 1984.

Between the time that the petition for rehearing was granted and before the original opinion was upheld, petitioner made a mistake of law in his pleadings regarding the then current status of the case. Petitioner had become inudated with responses from counties throughout the State of California and admittedly made a mistake in citing the law (See Transcript Vol. VIII page 83 lines 8-25 to page 84 lines 1-8).

No one was misled by the mistake. The court wasn't misled, the attorneys weren't misled. The counties weren't misled, yet the State Bar hearing referee chose to characterize this as deliberately making a false statement of law to a court with intent to deceive. As perposterous as that seems, the State Bar referee actually concluded that.

In this charge there are volumes of reported cases in California where courts have granted attorneys permission to amend pleadings and correct mistakes of law which occurred due to mistake, inadvertence surprise and excusable neglect.

The points raised in this petition are mentioned in greater detail in the Petition for Rehearing in the California Supreme Court. Lack of space prevents more detailed discussion in this

petition. (See Appendix pages 57-72, 132-135).

D. The Archuletta Matter

Petitioner represented Jacob Archuletta, who was injured when his mother slammed a safe door on his hand, breaking his little finger. Jacob was a minor and courts in California approve compromises of minor's claims.

Petitioner was charged with making a material omission by failing to advise the court that he had been given an advance by the mother. This was not inappropriate because it was paid out of the mother's funds, not her son's funds. (Exhibit 59) The State Bar referee refused to acknowledge this.

All of these issues were raised in the Petition for Rehearing in the California Court which is in the

Appendix at Pages 72-77.

E. Alleged practicing law while suspended for late payment of dues.

Petitioner represented himself in a federal court case during a period of time prior to when he had sent in his State Bar dues. The State Bar accused him of practicing law without a license; however, anyone may represent himself in court, and temporary suspension from practice does not automatically follow in federal court. Green v. Elbert 63 Fed Rptr 308.

F. Allegedly Tendering Checks With Insufficient Funds.

Implausable as it may seem, the State Bar even accused Jonathan

Ainsworth of deliberately defrauding the State Bar, a client and even the federal court where he practiced because personal checks to the above were returned N.S.F., but later paid. The doctrine of mistake appears alien to the State Bar referee, who actually stated he did not believe in due process for attorneys.

G. The Karen Mayes Ulricksen Matter

Petitioner represented James Mayes and his wife Karen Mayes. James Mayes died an untimely death due to an overdose of valium (Transcript Vol. III, page 154 et seq.) and his wife later admitted administering the overdoses to him. The State Bar argued that petitioner maintain inviolate the knowledge of the crime. Centuries of cases held otherwise, including the

United States Supreme Court cases Alexander v. U.S. 138 U.S. 353, 11 S. Ct. 350, Clark v. U.S. 289 U.S. 1 53 S. Ct. 465. Specifics of these allegations have been discussed at length in all stages of the proceedings including Mrs. Mayes probating a forged will (Transcript Vol. III, page 153). Lack of space prevents further discussion at this juncture, but see appendix at pages 80-92, 137-158 of the Petition for Rehearing for further discussion.

H. The Phyillaier Matter

In February 1982, petitioner represented Michael Phyillaier in a case against Phyillaier's business partner, Mandella, concerning the right of the parties to a Union Oil service station business and partnership assets.

Phyillaier gave petitioner an old boat. (Bill of Sale, Exhibit L.) This was later included in petitioner's written retainer agreement. (Exhibit H.) The State Bar charged Ainsworth with converting the boat.

The hearing referee found that there was no conversion of the boat (See Transcript Vol. IX, page 120, lines 22-24). Even the State Bar now concedes that "he (petitioner) prevailed on the issue of whether or not Mr. Phyillaier consented to the transfer of the boat (1986 cause Count Two)." See Examiner's Opposition to Hearing De Novo, p. 6, lines 3-4 (first parenthesis added); however, during the hearing the hearing examiner attempted to add a new charge, that of alleged failure to advise Phyillaier that he could consult another attorney before transferring the boat to

Ainsworth. The hearing examiner even admitted "The issue didn't arise until Mr. Ainsworth offered that (a valid bill of sale) as his defense (See Transcript Vol. V, page 149 lines 20-21).

Before signing these documents, Phyillaier mentioned that he had consulted another attorney. See Transcript Vol. V, page 143 lines 13-15 Vol. VI, page 57 lines 1-4)) Because of this petitioner did not additionally inform Phyillaier that he could consult another attorney, (See Transcript Vol. V, page 86 lines 6). Neither Phyillaier nor the State Bar challenged this. The remaining requirments for transferring the vehicle were met by the written retainer agreement which Phyillaier had signed (Exhibit H).

The Natali and Kelly 1988 California Supreme Court cases, below,

seem to allow the after the testimony amendment of charges procedure; however, the California State Supreme Court must yield to the U.S. Supreme Court by virtue of its decision in In Re Ruffalo, 390 U.S. 544, 885 S.Ct. 1222, which does not allow it (See Discussion below).

Additionally, in the words of Justice White in Ruffalo, petitioner should not be disbarred for this type of act because it is not "malum in se" i.e. alleged failure to advise (And he didn't violate the rule anyway, since Phyillaier said he had consulted another attorney and the retainer agreement described the reason for the transfer).

Ainsworth refunded to Phyillaier the sales price of the old boat in a spirit of good will, despite the fact that Ainsworth had performed the legal service that had been expressed in the

legal documents by which the boat was validly and properly transferred to him. (See Exhibit CC.)

All of this was raised throughout the proceedings. (See Petition for Rehearing in Appendix at pages 92-104, 158-168).

2. Argument

A. CLAIMS WHICH WERE WITHDRAWN BUT WHICH PROCEEDED ANYWAY, DENYING PETITIONER DUE PROCESS

The following witnesses withdrew their complaints, but The State Bar of California proceeded even after petitioner had received written notice from the witnesses that they had withdrawn their complaints. This denied petitioner his constitutional right to due process:

1. Rebecca Archuletta withdrew her

claim and refused to testify (Exhibits F,G)

2. Lyle Wetherford withdrew his complaint, but testified against Jonathan Ainsworth anyway. (Exhibit B,. Transcript Vol. I, pages 61-68)
3. Michael Phyillaier withdrew his complaint but testified against Jonathan Ainsworth anyway. (Exhibit CC, Transcript Vol. I, page 21 lines 12-20).
4. According to the hearing examiner, Karen Mayes signed a statement in which she agreed to dismiss the complaint (Exhibit FF).

Mr. Fishkin, the hearing examiner acquiesced to the above arrangements. He even counseled two of the complaining

witnesses to sign the statements which he knew were intended to resolve the claims. (Vol. 1, Page 61 lines 18 to page 68 line 10, pages 124-126 Vol. 1 page 253 lines 3-14).

This procedure does not conform to the due process notice standard which the United States Supreme Court stated in In Re Ruffalo, 390 U.S. 544 at 550, 88 S. ct. 1222 at 1226, since petitoner reasonably believed and had written notice that the claims were resolved and withdrawn. The State Bar argues that it has a rule which allows this. If so, the rule violates constitutional due process standards.

B. DENIAL OF RIGHT TO CONFRONT WITNESSES, IN VIOLATION OF THE SIXTH AMENDMENT

On two occasions petitioner demanded

the right to confront the witnesses against him, but it was denied by the referee.

Hassan Haschemi refused to testify against petitioner. His attorney testified for him! This seems so absurd that it needs little explanation other than to simply point out there is a Sixth Amendment Constitutional guarantee of the right to confront witnesses against an accused. Petitioner demanded this right, yet it was denied. (See Transcript vol. II, page 3 lines 22-25, page 4 lines 1-21, page 72 lines 17-19, page 74 line 4).

On another matter, Rebecca Archuletta also refused to testify against petitioner. This was pointed out to the hearing referee, yet he allowed the proceedings to continue without allowing petitioner to confront

this witness against him. Mrs. Archuletta had also signed a statement withdrawing her claim, (Exhibit G). The State Bar examiner interpreted this as Mrs. Archuletta being "totally uncooperative" and proceeded without her anyway (See Examiner's Opposition to Hearing De Novo).

In both of these instances, trial was conducted by surmissal. The State Bar surmised what the individuals would have said. Constitutional rights were trampled on.

C. THE FINDINGS DID NOT CONFORM TO THE CHARGES AND WERE NOT AMENDED, THOUGH NEW CHARGES WERE ADDED AFTER EVIDENCE WAS TAKEN, DENYING PETITIONER DUE PROCESS.

In regard to due process, the United States Supreme Court said in In Re Ruffalo, 390 U.S. 544, 88 S. Ct. 1222, that it was improper to disbar an

attorney based upon an alleged offense which was added after the attorney and witnesses had testified. The California State Supreme Court has consistently ignored this decision! It must yield to what the U.S. Supreme Court said in In Re Ruffalo, cited above, despite its holdings in Natali v. State Bar 45 Cal 3d and Kelly v. State Bar 45 Cal 3d 649. The U.S. Supreme Court has said:

> "As Judge Edwards,dissenting below, said, 'Such procedural violation of due process would never pass muster in any normal civil or criminal litigation. (Cite to Rule 15(a) F.R.C.P.).
>
> "These are adversary proceedings of a quasi-criminal nature. Cf. In re Gault, 387 U.S. 1, 33. The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh.[4]

"How the charge would have been met had it been originally included in those leveled against petitioner by the Ohio Board of Commissioners on Grievances and Discipline no one knows. (In Re Ruffalo 370 F2d at 462).

In Footnote 4, The U.S. Supreme Court said: "The Ohio State Bar Association and Mahoney County Bar Association, amici curiae in support of the order of the Court of Appeals, argue that there was no due process violation because the State Board gave petitioner several months to respond to charge No. 13. This argument overlooks the fact that serious prejudice to petitioner may well have occurred because of the content of the original 12 specifications of misconduct. He may well have been lulled 'into a false sense of security' (Bouie v. City of Columbia, 378 U.S. 347, 352) that he could rebut charges Nos. 4 and 5 by proof that Orlando was his investigator rather than a solicitor of clients. In that posture he had 'no reason ever to suspect' (Ibid.) that in doing so he would be, by his own testimony, irrevocably

> assuring his disbarment under charges not yet made. This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprive petitioner of procedural due process. Reversed" In Re Ruffalo, above (emphasis added). wrote Justices Douglas, with whom Justice Black joined the opinion. Justices Harlan White and Marshall concurred Justice Stuart took no part in the decision.

Simply put, the California Court in Kelly and in Natali and in the present case, Ainsworth, did not discuss and was apparently unaware of the decision by the United States Supreme Court in In Re Ruffalo above, despite the fact that petitioner had brought it to the Court's attention. Of course the U.S. Supreme Court's decision is controlling.

In the present case, the State Bar

of California sought to distinguish Ruffalo saying it did not apply; however, it did. In Ruffalo, the attorney defended the charges against him by proving that he hired an investigator. In the present case, Jonathan Ainsworth disproved the charges of alleged conversion of an old boat (Phyillaier) by showing a bill of sale for the boat. This bill of sale was then used by the State Bar to formulate a new charge against Jonathan Ainsworth, (See Transcript Vol. V, page 149 lines 20-21) after testimony had been given. He was charged with alleged failure to advise the client that he could consult another attorney before transferring the boat, when in fact Phyillaier did consult one. (See Transcript Vol. V, page 143, lines 13-15, Vol. III, page 57 lines 1-4). The California Court has

ignored what the U.S. Supreme Court said regarding attorneys' rights to due process!

The same thing was done in regard to the Haschemi and Ghasemloo matters. In Haschemi, the charges and findings confuse Haschemi's Iranian companies with petitioner's American corporations. (See Transcript Vol. II, page 7 lines 3-25 page 8 lines 1-16) Petitioner is unbelievably charged with malfeasance against his own corporations!

At the beginning of the proceedings, petitioner attempted to clear up the discrepency in the charges; (See Transcript Vol. II, page 7 lines 6-25, page 8 lines 1-16, Vol. VI, page 68 lines 18-25, page 69 lines 1-11) however, the State Bar never amended to state them correctly.

In Ghasemloo, the charges say that

petitioner hired Ghasemloo as a paralegal in regard to a lawsuit on behalf of a corporation which was owned by petitioner himself! As charged, it would not be wrong for petitioner to pay someone to assist him with regard to his own corporation; however,the findings improperly conclude attorney fee splitting with a nonlawyer. This was not properly alleged.

In both Haschemi and Ghasemloo the charges allege acts regarding corporations which were not even in existence at the times alleged! (See Transcript Vol. VII, page 68 lines 18-25, page 69 lines 1-11).

Petitioner had repeatedly objected to the entire proceedings (See Transcript Vol. I, pp.3 lines 16,6,8,23,104,105 lines 6; Vol. II, p. 10 lines 6-7, page 12 lines 24-25, page

13 (preserved for entire trial) Vol. II, p. 15 line 25, page 16 lines 1-12, page 18 lines 16-17, page 32 lines 17-18, pages 35, 36, 37, 38, 61,Vol. VII, page 81 lines 3-4) and did not waive his objections.

The procedures used by the State Bar also violates petitioner's constitutional right "to be informed of the nature and cause of the accusation" as specified in the Sixth Amendment.

D. PETITIONER WAS DENIED HIS RIGHT TO CROSS EXAMINE WITNESSES

The hearing referee actually cited as an "aggravating factor" that petitioner wished to cross-examine a witness (Phyillaier) concerning his mental capacity to testify, even though the witness had been previously discharged from employment at the

Alameda County Sheriff's Department for mental reasons. (Transcript Vol. I, pp. 181-184.) The referee even threatened to take petitioner to Superior Court in a contempt proceeding in retaliation for asking the questions. (Transcript Vol. I page 210 lines 14-19). The referee would not allow this fundamental right and it cast a shadow on the entire proceedings.

Phyillaier later testified "I have about 16 degrees in automotive engineering." Petitioner was not allowed to question this highly implausable statement which reflected on Phyillaier's credibility and mental competence (Transcript Vol. I, page 205, line 25 to page 206 lines 1-9).

Even the referee ruled against Phyillaier regarding his conversion allegations (Transcript Vol. IX, p.120,

lines 22-24), casting further doubts on Phyillaier's lack of credibility and lack of mental competence; however, although stated in open court, this finding was left out of the highly selective decision. The hearing examiner also conceded that Michael Phyillaier did not prove his allegation. (Examiner's Opposition to Hearing De Novo p.6, lines 3-4)

E. PETITIONER WAS DENIED DUE PROCESS BECAUSE THE REFEREE WAS NOT IMPARTIAL.

The referee refused to allow petitioner to introduce evidence (Transcript Vol. IX, p. 10, lines 1-17) refused to listen to motions (Transcript Vol.I, page 12, lines 25 to page 13 lines 1-6), said that petitioner could not state an objection until <u>after</u> a witness answered a question (Transcript Vol. II, page 33 lines 1-7) and even cut

off the hearing before petitioner could finish his case. (Transcript Vol, IX, p.118, line 1)

The referee also showed that he erroneously believed that the State Bar Court had not issued an order granting petitioner an appointed counsel which it had. The referee, erroneously reported: "In respondent's case he failed to qualify for a State Bar appointed attorney because his financial condition did not show he could not afford his own attorney." Order on Application for Hearing DeNovo, April 2, 1987, page 3 lines 9-11, Emphasis added.), yet as the California Supreme Court correctly pointed out in its opinion: "The record indicates that petitioner's 1985 motion for appointed counsel was granted over the phone by the State Bar clerk's office in November

1985." For the referee to be in error about this fact throughout the entire hearing shows he handled Ainsworth's requests for counsel at the hearings with erroneous assumptions. Petitioner's lawyer was taken away from him without due process.

F. PETITIONER WAS DENIED DUE PROCESS BECAUSE THE REFEREE DID NOT PROPERLY CONSIDER THE MITIGATING FACTORS.

The following factors mitigate against discipline: (i) Between 1979 and 1984, petitioner repeatedly suffered from uncontrolled bleeding due to ulcerative colitis and was hospitalized for five days in 1979 having lost 40 lbs. of body weight. This was shortly before the Ghasemloo and Haschemi matters. (See Exhibit AAA, page 14

Transcript Vol. VII, page 94 lines 8-25, page 95, 96, 97, 99-101) The uncontrolled bleeding had caused him to lose 25 lbs. of body weight during the Mayes and Phyillaier matters. (See Exhibits III and JJJ, as well as Transcript Vol. V, pages 115-116). Petitioner continues to protest that the referee would not allow or even consider additional medical testimony as to the severe effect upon him of the prescribed medication. (See Application for Hearing De Novo, March 30, 1987 and Declaration of Leo Tuckman, M.D., which showed additional medical evidence that petitioner suffered debilitating effects from the medicine he took to control his illness); (ii) petitioner had for the last year and one half been assisted in his practice by a personal injury attorney in good standing; (iii) four

character witnesses testified at the hearing to petitioner's honesty, veracity, trustworthiness, and conscientiousness; (iv) petitioner had no prior record of discipline. These matters appear in the Petition for Rehearing in the California Court at pages 105-108 of the Appendix and were not given proper consideration by the heearing referee.

G. MANY OF THE CHARGES WERE BROUGHT WELL BEYOND THE TIME OF THE APPLICABLE STATUTE OF LIMITATIONS. THIS DENIED PETITIONER DUE PROCESS.

The referee ignored the laws that deal with statutes of limitations, which in California is two years for attorney malpractice.

The Haschemi and Ghasemloo

allegations were filed on February 26, 1985 and occurred "In or about October, 1979," "on December 20, 1979," as well as acts in 1981 (four to six years). These should have been stricken because they were barred by the Statute of Limitations. Petitioner objected, yet the charges remained. (See Transcript Vol. II, page 3 lines 11-25, page 4 lines 1-21).

The Michael Phyillaier allegations were filed against petitioner on January 17, 1986 and dealt with allegations that occurred in 1982, (four years previously). These allegations should likewise have been stricken. (Transcript Vol. I, page 200 line 25 to page 201 lines 1-4) Petitioner was denied due process.

H. PETITIONER WAS DENIED HIS RIGHT TO COUNSEL

Petitioner voluntarily accepted service by mail, of the first notice to show cause with the following condition: "This document is filed upon condition that counsel be appointed and constitutes a special appearance for that purpose."The State Bar Court accepted the condition and ordered that counsel be appointed; yet this was never done. There was no evidence that the State Bar ever attempted to comply with the Court order. The State Bar Court later reneged on the agreement and took the attorney away.

When the California Supreme Court later reviewed the order regarding appointed counsel which had been granted, the State Bar urged ex post facto that the California Court reconsider petitioner's gross income, not his net income. The falacy of this

approach, which the California Supreme Court followed, is obvious. Gross income did not include operating expenses, office expenses, medical bills, etc. It is the "bottom line" that is relevant, not what one grosses in his law practice. Even so, the form shows $1,500 take home pay which is $18,000 per year gross, not the $42,000 gross figure that the State Bar erroneously calculated and the California Court erroneously followed,

Petitioner again accepted service by mail on the second notice to show cause "upon condition that counsel be appointed and constitutes a special appearance for that purpose." None was appointed. Petitioner's statement of need was based on the identical financial data as his 1985 request for appointment of counsel, since his

financial position had not changed.

In moving to take away petitioner's attorney, the State Bar argued that petitioner was attempting to delay the proceedings when in fact it was the State Bar that delayed by failing to find petitioner his court ordered appointed attorney. In bringing the motion to take away pettioner's attorney, the hearing examiner willfully failed to serve petitioner's counsel, who had been ordered appointed. There is no proof of service on petitioner's attorney whatsoever. No hearing was held and an order was issued ex parte taking away petitioner's attorney even before the copy of the motion was received.

Petitioner constantly objected to proceeding without counsel, and to the arbitrary way proceedings were

conducted. (Transcript Vol. I, p.3,6,7,9,10,Vol. VI, page 4 lines and to the entire proceeding (Transcript Vol. I, page 23 lines 4-6, page 104 lines 18-25, page 105 lines 1-13). Petitioner raised these points with the California Supreme Court as the Petition for Rehearing and the Opinion in the Appendix clearly show.

The proceedings should have been stayed until the State Bar complied with the court order and found petitioner an appointed counsel. No subsequent papers were sent to the court appointed counsel and were therefore invalid, including the trial and the trial notice.

The order appointing counsel should be reinstated and the State Bar ordered to pay petitioner's attorneys fees and costs within twenty days of the filing of a cost bill by petitioner. (After

the hearing was over petitioner was able to finally locate counsel to help with the appeal).

I. THE DENIAL OF THE MOTION FOR A CONTINUANCE DENIED PETITIONER HIS DUE PROCESS RIGHTS.

Approximately two weeks before the disciplinary hearing was to begin, petitioner sent a mailgram to the State Bar requesting a sixty-day continuance to recover from surgery. Evidence of exploratory surgery for cancer, (see Exhibit AAA), was contained in numerous motions and at the hearing. All requests for continuances were sternly refused (Transcript Vol. I, page 3,5,6,8, Vol. III, page 10, 11, 57, Vol. VI, page 47, line 25, Vol. VI, page 61, 87).

Petitioner also suffered extreme pain at the hearing since he also needed additional hernia surgery, yet he was still not allowed a continuance (see Transcript Vol. I page 6 lines 11-25, Vol. IX, page 13, line 22 as well as medical records.) "I need a hernia operation. This had made it very difficult to carry my papers back and forth to this Court..." (See Transcript Vol. VI, page 58 lines 22-24) The referee even ridiculed petitioner's poor health by saying "I'm not feeling so well either" when petitioner implored him for a continuance (See Transcript Vol. I page 257 lines 22-25, page 258 lines 23-24, page 259 lines 1-11).

The referee actually bereated petitioner when he asked for time to review the documents which he hadn't seen in years (Transcript Vol. II, page

143 lines 16-21).

At one point, petitioner actually fell asleep at the hearing table due to physical exhaustion and, as he told the referee, he was averaging only two hours of sleep per night due to trial preparation and his physical disability. (See Transcript Vol. IV, page 171 lines 5-8) Petitioner even fell asleep at the wheel while driving to a hearing, his condition was so week.

The denial of the motions for a continuance denied petitioner due process. It was so severe it even amounted to torture (See Transcript Vol. IV, page 170 lines 1-11) Sentenced to undergo trial under the circumstances amounted to cruel and unusal punishment.

Fundamental fairness required a

continuance after surgery of this type and with petitioner half asleep, in need of additional surgery, and semi conscious. State Bar Court Rules of Practice, former rule F.3, now rule 1131(d) states that a continuance may be granted on a showing of good cause. One should have been granted. (See appendix at pages 113-117 for further discussion)

J. THE CLIENT SECURITY FUND MATTERS WERE IMPROPERLY SEVERED, DENYING PETITIONER DUE PROCESS AND VIOLATING HIS RIGHTS AGAINST DOUBLE JEOPARDY.

The referee ordered the Phyillaier and Mandella Client Security Fund matters relating to the ownership of the boat and the Phyillaier-Mandella business partnership off calendar without prejudice, violating the

constitutional prohibition against double jeopardy since evidence had already been taken and the Phyillaier complaint was ruled upon. Petitioner strenously objected. (Transcript Vol. V, pages 175, 176, Vol. III, pages 11, 112 lines 1-15) The hearing examiner had said that these matters were the same as the Phyillaier matter, (Transcript Vol. III, page 7 lines 21-25). The referee should have dismissed the Client Security Fund matters with prejudice since evidence had been received. See Appendix pages 117-119 for further discussion.

K. CONCLUSION

Petitioner requested a new hearing before three impartial referees, with an attorney present to represent him, and not immediately following exploratory

surgery for cancer. This was denied by the California Supreme Court (See Declaration of Jonathan Ainsworth filed with the California Supreme Court).

Disbarment is inappropriate in view of the repeated violations of petitioner's constitutional rights, as well as the contradictions between the findings and the charges, between the findings and the facts and between the findings and the law. The procedures followed by the State Bar in its hearing are reminiscent of midevil trials.

What the State Bar of California proved was that petitioner was very sick and suffered from extreme cases of ulcerative colitis and uncontrolled bleeding that caused him to be near death. At these points in his career, petitioner made tactical (not ethical) mistakes in the conduct of his practice,

the type of which that have ordinarily been corrected by California lawyers and California courts for over a century of California jurisprudence. (See Appendix at pages 132-135 of Petition for Rehearing). They were not the type of acts which Justice Byron White called "mallum in se" and were not the type to warrant disbarment; however, the hearing referee chose to characterize them as deliberate evil acts, even though there was no evidence of malice or intent. The referee was hardly impartial as his cruel treatment of petitoner's medical condition during the hearing clearly indicated.

The order of disbarment should be reversed and the State Bar of California ordered to pay Jonathan Ainsworth's attorney's fees and costs within 20 days of his filing a memorandum of attorney's

fees and costs, since his court ordered appointed attorney was taken away from him without due process of law. The findings and procedures that were followed cannot pass constitutional muster.

REASONS FOR GRANTING THE WRIT

A "reign of terror" currently exists in California with respect to attorneys' rights to practice law. Guilt by accusation is the norm, and attorneys are presumed guilty and must overcome this presumption by nebulous standards of proof that are not followed. Not only is the accused presumed guilty, he must overcome this presumption with proof "beyond a reasonable doubt", or else he is ostracized from his profession permanently. Prosecutors not only seek to deprive petitioner of his livelihood,

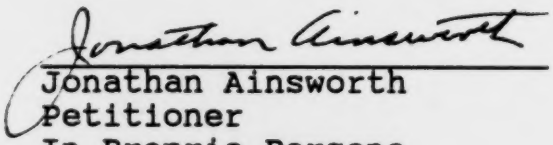
Prosecutors and tribunals are setting dangerous precedents in California with regard to due process rights as they apply to attorney defendants, ignoring constitutional safeguards and U.S. Supreme Court decisions in the process.

Petitioner requests that this Court grant the petition for a Writ of Certiorari and at the same time summarily reverse the judgment below and order that the State Bar of California pay all of petitioner's attorneys' fees and costs from the outset of the case to its conclusion since his court ordered attorney was taken away without due process.

Unless this court acts the State Bar of California will continue to trample on attorneys' constitutional rights. This case has universal applicability to attorneys throughout

California.

Respectfully submitted January 24th 1989.



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